

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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BERNADINE MORIMOTO, as personal representative of the Estate of Abygaile B.; EMBER B.; and KARRIAH M.,

Plaintiffs,

v.

RICHARD WHITLEY, et al.,

Defendants.

Case No. 2:17-cv-01774-APG-GWF

**ORDER DENYING MOTION TO
DISMISS AND APPOINTING
BERNADINE MORIMOTO AS
GUARDIAN AD LITEM SOLELY FOR
PURPOSES OF PROSECUTING THIS
ACTION**

(ECF Nos. 30, 31)

Defendants Hopelink of Southern Nevada, James Hardee, Clark County, Donald Burdette, and Timothy Burch move to dismiss on the basis that the real party in interest is not before the court because the suit was brought by Bernadine Morimoto on behalf of her three minor grandchildren but Bernadine does not have legal custody of the children. ECF Nos. 30, 31. The plaintiffs respond that while the children's mother has legal custody, they request Bernadine be appointed guardian ad litem for purposes of this lawsuit because the mother is in the Air Force and may have to deploy at any time, and it is the mother's preference that Bernadine be appointed for these purposes. ECF Nos. 32, 38. Additionally, Bernadine since has been appointed as special administrator of Abygaile B.'s estate. ECF No. 44 at 5.¹ The defendants express the concern that at some point, a conflict may arise between the mother and Bernadine about what is in the children's best interests regarding this litigation.

Bernadine has been appointed special administrator for Abygaile B.'s estate, so she is the proper party to prosecute this action for Abygaile B.'s estate. Fed R. Civ. P. 17(a). I appoint Bernadine as the guardian ad litem for plaintiffs Ember B. and Karriah M. solely for purposes of prosecuting this case. Fed. R. Civ. P. 17(c). Both the mother and Bernadine agree it is in the

¹ I presume the reference to the estate of “Philip A. Wolfe” in ECF No. 44 at 5 is a typographical error.

1 children's best interest to have Bernadine act as the children's guardian ad litem for this purpose.

2 Should a conflict later arise, the children's mother may move to challenge that appointment.

3 IT IS THEREFORE ORDERED that the defendants' motion to dismiss (**ECF No. 30**)

4 **and joinder (ECF No. 31) are DENIED.**

5 IT IS FURTHER ORDERED that Bernadine Morimoto is appointed as the guardian ad

6 litem for plaintiffs Ember B. and Karriah M. solely for the purpose of prosecuting this case.

7 DATED this 19th day of April, 2018.

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10 ANDREW P. GORDON
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12 UNITED STATES DISTRICT JUDGE
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